

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of Falon Sam	<b>FINDINGS OF FACT, CONCLUSIONS AND ORDER</b>
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This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on December 10, 2008. The matter was conducted by means of a telephone conference, with the ALJ presiding at his office in St. Paul; Krista J. Guinn Fink, counsel for the Department of Corrections (Department) appearing at her office in St. Paul; and Falon Sam (Claimant), participating from the Minnesota Correctional Facility at Lino Lakes. Jacob McLellan, Supervising Corrections Agent, appeared by telephone from the Department's St. Cloud office. The hearing record closed with the receipt of correspondence from counsel on December 15, 2008.

**STATEMENT OF THE ISSUE**

Whether the supervision fees owed to the Department by Mr. Sam for the period June 17, 2008, through June 17, 2009, may be collected through the Minnesota Revenue Recapture Program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On June 17, 2008, Falon Sam began a term of probation after release from incarceration for repeated DUI offenses.<sup>1</sup> As of that date, Mr. Sam became liable to the Department of Corrections for an annual supervision fee of \$120.00.

2. On September 24, 2008, Mr. Sam's probation was revoked, and he was remanded to a Minnesota correctional facility to continue serving his sentence. Under Minnesota Department of Corrections Policy No. 201.013, effective July 1, 2008, Mr. Sam's unpaid supervision fees (he had paid none of his \$120.00 obligation) were submitted immediately for revenue recapture.

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<sup>1</sup> Test. of McLellan.

3. During the period of his probation, Mr. Sam had applied for a waiver of supervision fees through his probation agent, Kate Frykman. In accordance with Department policy, Ms. Frykman sent Mr. Sam's application on to her district supervisor, Jacob McLellan. Mr. McLellan ruled that Mr. Sam was not eligible for a waiver because he was not indigent, and the application for waiver was denied.<sup>2</sup>

4. On September 25, 2008, Mr. McLellan notified Mr. Sam by mail that he had been assessed a supervision fee initially in June, 2008, and that he still owed \$120.00 for supervision fees when his probation was revoked on September 24, 2008.<sup>3</sup> Mr. McLellan's letter to Mr. Sam notified him that the \$120.00 balance of supervision fees still owed had been submitted to the State of Minnesota Revenue Recapture Program. The letter also notified Mr. Sam that, if he wished to contest the claim, he had to notify the Department in writing within 45 days of mailing of the letter to him. On October 1, 2008, Mr. Sam wrote to Mr. McLellan and stated "I would like to contest the charge of this \$120.00 supervision fee." With the filing of that timely appeal, this hearing process followed.

5. Mr. Sam maintains that he paid \$30.00 in supervision fees before his probation was revoked in September 2008, so that the \$120.00 in fees owed is incorrect, and the amount should be \$90.00. He maintains further that Department policy requires that if an offender is revoked and committed to a correctional facility, any fees not paid (the \$90.00 balance) will not be pursued or submitted for revenue recapture.<sup>4</sup>

6. The Department of Corrections has no record of Mr. Sam's having paid any part of the \$120.00 supervision fee due for the year June 17, 2008 through June 17, 2009.<sup>5</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08 and 270A.09.

2. Notice of the Hearing was proper and the Department has fulfilled all procedural requirements.

3. Falon Sam became liable for supervision fees due to the Department's for the period of one year commencing June 17, 2008, the beginning of his first year of probation. Effective September 25, 2008, after Mr. Sam's probation was revoked, it was

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<sup>2</sup> *Id.*

<sup>3</sup> Ex. C.

<sup>4</sup> Test. of Sam.

<sup>5</sup> Test. of McLellan.

appropriate for the Department to submit his \$120.00 balance of unpaid supervision fees immediately to the Department of Revenue's Revenue Recapture Program.

4. It is appropriate for the Department of Revenue to collect the correctional fee of \$120.00 owed by Falon Sam by means of revenue recapture in accordance with Minn. Stat. Chap. 270A.

Based on the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

**IT IS ORDERED** that the Department of Corrections may proceed with its request to the Department of Revenue to collect the \$120.00 due from Falon Sam for supervised release fees for the period from June 17, 2008 to June 17, 2009, through the State of Minnesota Revenue Recapture Program.

Dated: January 13th, 2009

/s/ Richard C. Luis  
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RICHARD C. LUIS  
Administrative Law Judge

Reported: Taped  
No Transcript Prepared

### **NOTICE**

This Order is the Final Decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this Decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

### **MEMORANDUM**

Mr. Sam's arguments are misplaced. The \$120.00 supervision fee was due in its entirety, certainly from the point when Mr. Sam had his probation revoked. His argument that it was due only month-by-month for the first three months that he was on probation, and that therefore he owed a maximum of \$30.00 for supervision fees, relies on the Department's Supervision Fees Policy of 2006, which has been superseded by Division Directive 201.013, effective July 1, 2008. Section A.3 of the 2008 policy notes that, beginning July 1, 2008, the supervision fee will be assessed on the date each offense is sentenced. Even under the prior policy, which expired June 30, 2008, any probation or sentence after January 1, 2001 was assessed a fee upon the probationer's first visit to a corrections agent, so Mr. Sam is incorrect in his argument that any proration of the assessed fee means that the \$10.00 per month prorated was all he owed at any particular time. In this case, even if Mr. Sam was current on his \$10.00 per

month payments for the first three months before his probation was revoked, he would still have been liable for the balance.

Under Parts A.10 and A.11 of the 2006 policy, proration of the assessed fee at the rate of \$10.00 per month was allowed, but did not affect the total amount of the assessment unless the payments were made. In this case, it has not been established, except by way of Mr. Sam's allegation, that any amount has been paid, so the debt of \$120.00 still remains. In addition, the old policy that fees not paid would not be pursued or submitted for revenue recapture if an offender's probation was revoked and the offender was committed to a correctional facility, was no longer in effect as of the date (September 24, 2008) Mr. Sam's probation was revoked.

As noted earlier, the 2008 document, which is the one relevant here, provides that if an offender has not received the waiver (which Mr. Sam has not) any unpaid balance (\$120.00 here) in supervision fees will be immediately submitted for revenue recapture upon an offender's revocation of probation and execution of sentence.<sup>6</sup> It is thus appropriate to proceed with revenue recapture of the \$120.00 owed by Mr. Sam.

**R.C.L.**

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<sup>6</sup> Dept. Policy 201.13, effective July 1, 2008, Part B.4.